

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 484 of 1994

with

CIVIL REVISION APPLICATIONS No.485 AND 537 TO
541 OF 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UNION OF INDIA

Versus

VAECHAND K SHAH

Appearance:

MR. N.S. SHEVADE FOR THE PETITIONER

MR. GOPINATH AMIN FOR RESPONDENTS

MR. KAMAL M. MEHTA, AGP FOR THE STATE OF GUJARAT.

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 25/07/97

ORAL JUDGEMENT

1. In this group of Civil Revision Applications, the

acquiring body, namely, Union of India, Western Railway, through Executive Engineer, approached this Court, inter alia, for quashing and setting aside the order dated 28th March, 1994, passed by the Court of Assistant Judge, Surendranagar, in Civil Misc. Applications No.2 of 1994, 3 of 1994, 9 of 1994, 10 of 1994, 11 of 1994, 12 of 1994 and 13 of 1994. By the common impugned order, all such Misc. Civil Applications are rejected and the applicant is directed to deposit the balance amount in Execution Petition No.72 of 1993, 18 of 1992, 26 of 1988, 22 of 1988, 21 of 1988, 27 of 1988 and 29 of 1988 on or before 5th April, 1994. Such order is passed by the learned Assistant Judge on 28th March, 1994.

2. It appears that, notification under Section 4(1) of the Land Acquisition Act, 1894 was issued on 17th June, 1973 for conversion of railway of metre gauge to broad gauge, the project being popularly known as VOP project, namely, Viramgam, Okha, Porbandar project. The said notification was followed by notification under Section 6 dated 8th December, 1974, wherein the public purpose mentioned was the same. After following the procedure, the Land Acquisition Officer passed the award on 2nd May, 1983.

3. It appears that possession was taken over by the acquiring body, namely, the Railway, on 17th December, 1973, i.e. much prior to the issuance of notification under Section 6 or award of the Land Acquisition Officer. Obviously, such possession was taken over because of consent of parties.

4. Thereafter, on demand for additional amount of compensation, Land Acquisition Reference No.2 to 22 of 1984 and 37 of 1984 came to be made for enhanced compensation. The competent Court by judgment and award dated 31st December, 1984, awarded additional compensation as well as interest. Against such judgment and award of the competent Court, the State of Gujarat has preferred First Appeal No.155 to 1628 of 1988 in this Court, which are admitted and are stated to be pending for final hearing by Mr. Kamal Mehta, learned Assistant Government Pleader.

5. It may be noted that, pursuant to the aforesaid notification for very public purpose, reference was also sought by other claimants and initially award was passed by the Land Acquisition Officer in Award No.6 of 1976. Once again those claimants, who were aggrieved by the amount awarded by the Land Acquisition Officer, preferred Land Acquisition Reference Case No.23 of 1984 to 32 of

1984. In this group of matters, the notification under Section 4 was issued for the very purpose on 4th July, 1977 and notification under Section ;6 was issued on 31st March, 1980. The award was passed by the Land Acquisition Officer on 27.2.1984, against which aforementioned references came to be filed and were decided on 31st December, 1987.

6. In the first appeals, which are filed by the State of Gujarat and stated to be pending for final hearing and in which the acquiring body is also a party, the stay applications were also moved and the Division Bench of the Honourable High Court, while admitting the First Appeals, granted usual conditional stay on depositing the amount awarded with interest and solatium, subject to the condition of claimants withdrawing the amount on furnishing the bank guarantee to the satisfaction of the Trial Court.

7. Mr. Shevade, learned counsel who is appearing for the acquiring body in this group of Civil Revision Applications, however, contends that the amount of interest awarded by the Land Reference Court under Section 18 is on the higher side and is not consistent with the provisions of Section 23(1)(a) of the said Act read with Section 28 of the said Act. The acquiring body, namely, the petitioner before this Court, being a party to the aforesaid group of First Appeals which are of the year 1988, could have well within law, competently maintained an application for appropriate modification and/or review of the order passed by the Land Reference Court. But, instead, it has resorted to the present proceeding of Civil Revision Application, presumably under Section 115 of the Code of Civil Procedure.

8. Mr. Shevade, learned counsel appearing for the acquiring body, has with all vehemence at his command submitted before this Court that the amount of interest awarded by the Land Reference Court is quite exorbitant and beyond the provisions of Section 23(1)(a) of the said Act and that, therefore, in exercise of the powers of this Court under Section 151 read with Section 152 of the Code of Civil Procedure, this Court can modify and/or correct the obvious clerical mistakes allegedly committed by the Land Reference Court while awarding interest. He has, in this connection, invited attention of the Court to the decision of the Apex Court in the case of reported in A.I.R. 1966 SC 1047 and in the case of Master Construction Co. (P) Ltd. v. State of Orissa & Another, reported in A.I.R. 1970 SC 70. The proposition of law that a clerical mistake or error could be

corrected and/or amended under Section 152 of the Code of Civil Procedure cannot be disputed. But, in the present case, the dispute between the parties is hotly debated and the amount of interest which is awarded by the Land Reference Court is, according to the claimants, the correct amount of interest at the correct rate while, according to the railway, i.e. the acquiring body, such amount of interest is higher than the amount of interest which could be awarded. In my opinion, the better and easier mode of clarifying the entire dispute for the Union of India, through Western Railway, was to move the Division Bench where it is, admittedly, a party. As per the final position of law, even the acquiring body has a right to prefer appeal, but, admittedly, they have not preferred appeal and have preferred to be respondents in the appeals which are preferred by the State of Gujarat. Even in such pending appeals, the acquiring body could have moved the Division Bench for appropriate modification, so as to avoid any conflict, but a novel method is adopted by preferring independent Civil Revision Applications only in one group of Land Acquisition References and thereby this Court is called upon to pass an order which may, in a given case, even ultimately affect the decision which the Division Bench may be inclined to render in the group of First Appeals which are pending for final hearing before this Court. Expression of any opinion by this Court on the question as to whether the claimants would be entitled to 12% interest from the date of Section 4 notification till possession of the land was taken over or whether they were entitled to interest at the rate of 9% from the date of possession till 17th December, 1974, i.e. the date of Section 6 notification or as to whether they were entitled to interest at the rate of 15% from 17.12.1974 to the date of payment would necessarily amount to pre-judging the issue or rendering a conflicting opinion without knowing the opinion of the Division Bench of this Court before whom the First Appeals of the year 1988 are pending. Any expression of opinion of this Court on such a vital issue may be in conflict with the judgment which the Division Bench may be inclined to finally pass or it may not be acceptable to the Division Bench which may, ultimately, decide the appeal. The obvious reason of resorting to this method is binding down the Division Bench in the group of aforesaid First Appeals to a situation where despite its disapproval from the opinion of this Court, it shall have to give reasons and shall have to render conflicting opinion. In my opinion, such approach and attempt on the part of the Union of India, through Western Railway, is not a wholesome approach or an approach worthy of any appreciation and it is deserved

to be condemned in the strongest possible manner. I for myself would not venture to trespass or encroach upon the jurisdiction which has already vested in the Division Bench and which has already seized of the matter in a group of First Appeals, where on Civil Application for stay, conditional order is passed in favour of the claimants. Therefore, without entering into other merits of the matter in which Mr. Shevade tried his level best to invite this Court to enter into, this Court would outright dismiss this group of Civil Revision Applications with liberty to the acquiring authority to move the appropriate Division Bench for appropriate reliefs which are being claimed before this Court in Civil Revision Applications or to move the Division Bench for fixing and setting down the group of First Appeals which are as old as of 1988. I for myself do not express any opinion on the controversy raised in this case which may, ultimately, affect the process of reasoning of the Division Bench.

9. In view of the aforesaid, this group of Civil Revision Applications is dismissed. Rule is discharged. It is, however, clarified that it will be open to the Union of India through Western Railway to move the Division Bench taking up the matters for appropriate relief in the aforesaid group of First Appeals.

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